Ordinance these licences are deemed to be issued under the Road Traffic Ordinance. The effect of regulation 3(4) is that no person is permitted to use a motor vehicle as a stage carriage unless such user is authorised by a Road Service Licence and the proviso reads as follows:

"Provided that for the purpose of this paragraph a comprehensive permit issued by the Commissioner under these Regulations shall be deemed to be a road service licence during the period of the validity thereof."

Regulation 4(2) prescribes that the conditions set out in the Second Schedule to the Regulations shall apply to and be the conditions of the respective permits enumerated in Parts I, II and III of the Schedule. These conditions relate to the terms under which stage carriages may be operated. It would seem to me, therefore, that what must be produced to the Court to prove that the defendant company is licensed to operate a stage carriage is a road service licence, that is the comprehensive permit and nothing else since very obviously the document produced in Court does not contain all the conditions under which the defendant company is permitted to operate its stage carriages.

Nobody has attempted to explain what Exhibit P.2 really is, but on the face of it, it clearly is not the document which authorised the use of the vehicle as a stage carriage.

The prosecution has failed, therefore, to prove that the vehicle was being operated in contravention of the conditions imposed by the licence which authorised its use and the appeal bv the defendant company must, therefore, be allowed.

There was one further ground of appeal. The police report was tendered duly certified in the Malay language and there was no translation supplied. I do not think that this is a good ground for allowing this appeal, but it should be clearly understood that documents should be translated so that they may be understood by the accused and his counsel, and although I do not consider that it is necessary to prepare a translation of every police report in the Malay language, if the accused or counsel requests a translation, and asks that the document be excluded until they have read and considered a proper translation, that is a reasonable request which must be granted. There may well be something in the report which is not admissible or is otherwise objectionable and the accused and his counsel have every right to see and understand the document before it goes in so that they may have an opportunity of lodging an objection.

For the above reasons the appeals must be allowed and the sentences against the three appellants quashed. The fines, if paid, must be refunded.

Appeal allowed.

Solicitors: *Sault, Keith Sellar & Co.*

FAR EAST CORPORATION LTD. v. SHUN CHEONG STEAM NAVIGATION CO. LTD.

[C.A. (Buttrose, Chua and Wee Chong Jin JJ.) June 27, 1962]

[Singapore — Civil Appeal No. 4 of 1962]

Bills of Exchange — Dishonoured cheques — Claim to set off and counterclaim against agents — R.S.C., 1934, O.XXII rr.11, 12 and 15 and O.XXXI r.6 — Stay of execution pending arbitration.

Practice and Procedure — Counterclaim against a co-defendant along with plaintiff — Points on which defendant has to satisfy court.

Where an action is between the immediate parties to a bill of exchange and the matters relied on by the defendant afford no defence under the Bills of Exchange Act the judge in chambers may properly, in the exercise of the powers vested in him, give liberty to the plaintiff to sign immediate judgment without a stay. In such cases the court treats the execution of a bill of exchange either as analogous to a payment of cash or as amounting to an independent contract within the wider contract in pursuance of which it was executed and not dependent as regards its enforcement on due performance of the latter. *James Lamont & Co.* v. *Hyland* (1) applied.

Before a defendant can plead a counterclaim against a co-defendant along with the plaintiff he must satisfy the court that the relief which he seeks is against *inter alios* the plaintiff and that the counterclaim relates to the subject matter of the plaintiff's claim. *Koh Chooi Peng* v. *Chung Kok Sang & Ors.* (2) approved.

In this case the plaintiffs (respondents in this appeal) claimed $86,000 against the defendants (appellants in this appeal) as drawers of two cheques for $43,000 each dated September 2 and 10, 1961, respectively payable to the plaintiffs which were duly presented for payment on November 13, 1961, but dishonoured. Notice of dishonour was given to the defendants by letter dated December 29, 1961. The defence was that those cheques were handed by the defendants to the plaintiffs as agents for a shipping company, the owners of the vessel *Obokil* as collateral security for the payment of charter hire due on redelivery of the vessel on completion of her charter period. The defendants alleged that the company was indebted to them in the sum of $141,349.34 being money paid by the defendants on their behalf in connection with another vessel owned by the company. The defendants claimed to set off against the plaintiffs' claim an equal amount of the debt due to them, i.e. $86,000. The defendants counterclaimed $55,349.34 being the amount alleged to be due to them after deducting the sum of $86,000, the amount of the plaintiffs' claim.

After the defence was filed the plaintiffs applied by motion under O.XXXI r.6 to sign judgment for $86.000 and to have the defendants' counterclaim struck out or excluded under O.XXII r.15. On the motion coming on before Rose C.J., the plaintiffs were given judgment for $86,000. A stay of execution was ordered pending conclusion of arbitration proceedings between the defendants and the company relating to the counterclaim in these proceedings and the counterclaim was ordered to be excluded under O.XXII r.15. It was further ordered that the costs of the motion be taxed and paid by the defendants to the plaintiffs [See formal order made on the 2nd day of February, 1962].

The defendants appealed from that order and the plaintiff cross-appealed against that part of the order imposing stay of execution.

Held: (1) on the facts of the case and applying the principles in *James Lamont & Co.* v. *Hyland* (1), the plaintiffs were entitled to the judgment they sought without a stay;

(2) the counterclaim was not maintainable against the plaintiffs themselves but only against the company and was in relation to an entirely separate contract in respect of a different vessel. It had nothing to do with the plaintiffs;

(3) before rr.11 and 12 of O.XXII can be held to apply it must be shown that the plaintiffs were concerned jointly with the company in connection with the defendants' counterclaim; in this case they were not;

(4) the counterclaim was rightly excluded under O.XXII r.15;

(5) the order of the learned Chief Justice as to costs was a proper exercise of his discretion in the matter.

Cases referred to:—

(1) *James Lamont & Co.* v. *Hyland* [1950] 1 K.B. 585.

(2) *Koh Chooi Peng* v. *Chung Kok Sang & Ors.* [1934] M.L.J. at p. 158.

(3) *M. Lee* v. *R.C.H. Lim & Co.* [1957] M.L.J. 190.

COURT OF APPEAL.

M. Karthigesu for the appellants.

J. L. Lloyd for the respondents.

Cur. Adv. Vult.

Buttrose J.: In this action the plaintiffs' claim was for $86,000 against the defendants as drawers of two cheques each for $43,000 dated the 2nd and 10th September, 1961, respectively payable to the plaintiffs which were duly presented for payment on or about the 13th November, 1961, but dishonoured. Notice of dishonour was given to the defendants by letter dated the 29th December, 1961.

The defence was that these two cheques were handed by the defendants to the plaintiffs as agents for Compagnie Asiatique de Navigation S.A. of Paris (hereinafter called the Company), the owners of the vessel *Obokil* as collateral security for the payment of charter hire due on redelivery of the vessel on completion of her charter period. The defendants alleged that the company was indebted to them in the sum of $141,349.34 being money paid by the defendants on their behalf in connection with another vessel the *Danakil* owned by the company.

The defendants claimed to set off against the plaintiffs' claim an equal amount of the debt due to them, namely, $86,000.

They also counterclaim the sum of $55,349.34 being the amount alleged to be due to them after deducting the sum of $86,000, the amount of the plaintiffs' claim.

After the defence was filed the plaintiffs applied by motion under O.XXXI r.6 of the Rules of the Supreme Court to sign judgment for $86,000 and to have the defendants' counterclaim struck out or excluded under O.XXII r.15. An affidavit was filed in support of the motion by the plaintiffs and an affidavit in opposition was filed by the defendants. On the motion coming on before Rose C.J., the plaintiffs were given judgment for $86,000. A stay of execution was ordered pending conclusion of arbitration proceedings between the defendants and the company relating to the counterclaim in these proceedings and the counterclaim was ordered to be excluded under O.XXII r.15 of the Rules of the Supreme Court.

It is from that Order that the defendants now appeal. The plaintiffs are cross-appealing against that part of the Order imposing a stay of execution.

In so far as the subject matter of the present proceedings is concerned, it is not in dispute that the plaintiffs were the agents of the company.

On the pleadings as they stand there is, so it seems to me, a clear admission by the defendants of liability on the two cheques sued upon.

Furthermore, in paragraph 3 of the defendants' affidavit filed in opposition to the judgment it is expressly stated that they admit owing the sum of $86,000 albeit to the company of which the plaintiffs are the agents. It is perhaps not unworthy of note in passing that no attempt was made in the affidavit to substantiate the pleading that these cheques were handed over as collateral security.

The plaintiffs' case is, in my opinion, clear and straightforward. They are the holders and payees of these two cheques drawn by the defendants which were dishonoured on presentation. There is a clear admission by the defendants of liability in respect of these cheques and that they owe the sum of $86,000. As against this the defendants contend that in respect of another vessel the *Danakil* under a contract made in Paris with which the plaintiffs are in no way concerned a sum of $141,349.34 is due and owing to them, $86,000 of which they seek to set off against the plaintiffs' claim and they counterclaim the balance. The position appeared to be that the *Danakil* was confiscated by the Indonesian Government. The defendants contended that this excused them from further payments of charter hire while the company, on the other hand, maintained that the defendants were not thereby discharged but liable in damages for the loss of the vessel. It has been agreed between the defendants and the company that this dispute should be settled by arbitration in London.

Now where a plaintiff brings an action on a bill of exchange as here and the defendant counterclaims on what Mr. Lloyd not inaptly described as extraneous matter the manner in which the Court exercises its discretion has been the subject of numerous decisions which have been conveniently reviewed in *James Lamont & Co.* v. *Hyland* (1). In that case it was held that where an action is between the immediate parties to a bill of exchange and the matters relied on by the defendant afford no defence under the Bills of Exchange Act the Judge in Chambers may properly, in the exercise of the powers vested in him, give liberty to the plaintiff to sign immediate judgment without a stay.

In such cases, as was pointed out by Roxburgh J., at p. 591, the Court treats the execution of a bill of exchange either as analogous to a payment of cash, or as amounting to an independent contract within the wider contract in pursuance of which it was executed and not dependent as regards its enforcement on due performance of the latter. On the facts of the present case and applying the principles enunciated in the case to which I have just referred, I have come to the conclusion that the plaintiffs

are entitled to the judgment they seek without a stay.

With regard to the counterclaim, I am of the opinion that the decision of the Chief Justice in ordering its exclusion was right. The counterclaim was not maintainable against the plaintiffs themselves but only against the company and is in relation to an entirely separate contract and in respect of a different vessel. It had nothing to do with the plaintiffs.

As Whitley J. indicated in *Koh Chooi Peng* v. *Chung Kok Sang & Ors.* [2] before a defendant can plead a counterclaim against a co-defendant along with the plaintiff he must satisfy the Court that the relief which he seeks is against *inter alios* the plaintiff and that the counterclaim relates to the subject matter of the plaintiff's claim.

It was urged upon us that as a matter of indulgence having regard to the circumstances of this case, we should give the defendants leave to serve the defence and counterclaim on the company because the convenience and justice of the matter require that the counterclaim be dealt with at the same time as the plaintiffs' claim. I am unable to accept this contention and I have been unable to find any authority to support it.

We were referred to the provisions of O.XXII rr.11 and 12 of the Rules of the Supreme Court which deal, *inter alia*, with claims by defendants against persons not parties to the action. Before those rules can be held to apply it must be shown that the plaintiffs were concerned jointly with the company in connection with the defendants' counterclaim which clearly they were not.

Furthermore, it would not, in my opinion, be right or proper to deprive the company of its right to arbitration in connection with this dispute under clause 23 of its Time-Charter Agreement with the defendants. There was apparently some doubt as to whether the arbitration had actually begun, but it is clear beyond question that the defendants had agreed to arbitration in London and this was acceptable to both sides.

For these reasons, therefore, in my judgment the counterclaim was rightly excluded under O.XXII r.15 of the Rules of the Supreme Court.

The order of the learned Chief Justice as to costs was, in my opinion, a proper exercise of his discretion in the matter. The facts in *M. Lee* v. *R.C.H. Lim & Co.* [3] are clearly distinguishable.

In the result, therefore, the appeal must be dismissed and the cross-appeal allowed in each instance with costs. Deposit to respondents.

Chua and Wee Chong Jin JJ. concurred.

Appeal dismissed.
Cross-appeal allowed.

Solicitors: *Allen & Gledhill; Drew & Napier.*

LEE BENG KONG v. COMPTROLLER OF INCOME TAX

[C.A. (Thomson C.J., Hill and Good JJ.A.) July 21, 1962]

[Penang — F.M. Civil Appeal No. 40 of 1961]

Practice and Procedure — Affidavit — Not clear what defence disclosed in — Failure to appeal against Income Tax Board of Review's decision — Appeal on assessment "determined on appeal" — Income Tax Ordinance, 1947, s.80.

This was an appeal from the decision of Barakbah J. ([1962] M.L.J. 60).

Held: the present case came fairly and squarely within the scope of section 80 of the Income Tax Ordinance and the appellant's affidavit disclosed no available defence. As the appeal on the assessment had been "determined on appeal", that section required that it shall be treated as final and conclusive.

COURT OF APPEAL.

S. A. Raj for the appellant.

Chang Min Tat for the respondent.

Thomson C.J.: This is an appeal from a decision of Barakbah J. whereby he dismissed an application by the appellant to have set aside a default judgment against him at the suit of the Comptroller of Income Tax for Income Tax and penalties amounting to $19,491.34 with interest.

The case arises from a long standing dispute between the appellant and the Income Tax authorities. Neither the early history nor the exact nature of that dispute is very clear though the basis of it would appear to have been a question as to whether certain money should be treated as capital or as income which attract tax.

In 1957, however, certain assessments in respect of the years 1950, 1951, 1952, 1953 and 1954 (the "disputed assessments") amounting in all with the addition of statutory penalties and with the deduction of a small sum paid on account to $19,491.34 were served on the appellant. The appellant objected to these assessments and although he did not comply with the provisions of section 72(2) of the Income Tax Ordinance ("the Ordinance") by stating the grounds of his objections these were considered by the Comptroller who dismissed them and on 14th January, 1959, caused notice of refusal to be served on the appellant. The appellant at that stage did not exercise his right of appeal to the Board of Review under section 75 of the Ordinance and after some correspondence a specially endorsed writ was issued against him on 6th October, 1959.

There was difficulty in serving the writ, but, six attempts at personal service having failed, on 14th March, 1960, an order was made for substituted service and on 18th March the appellant's solicitor entered appearance.

For some time previously a Kuala Lumpur firm of solicitors had been corresponding with the Comptroller on behalf of the appellant. Then, at some time prior to the issue of the writ, he